

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ILLINOIS NUT & CANDY HOME OF)
FANTASIA CONFECTIONS, LLC, an)
Illinois limited liability company,)
individually and on behalf of all others)
similarly situated,)

Plaintiff,)

v.)

GRUBHUB, INC., a Delaware corporation,)
and GRUBHUB SEAMLESS, INC., a)
Delaware corporation,)

Defendants.)

Case No. 14-cv-949

Hon. Elaine E. Bucklo

AFFIDAVIT OF JOSEPH J. SIPRUT

I, Joseph J. Siprut, declare:

1. I am over the age of eighteen and am fully competent to make this declaration. I make this declaration based upon personal knowledge unless otherwise indicated.

2. I am admitted to practice in the State of Illinois and in the United States District Court for the Northern District of Illinois, and other federal district courts. I am one of the attorneys for Plaintiff and the proposed Class herein. I make this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. If called as a witness, I would and could testify to the following:

3. I am the managing partner of the law firm of Siprut PC (herein "Siprut PC" or "Class Counsel"). I have personally been involved in the entirety of the prosecution of this class action lawsuit (the "Action").

4. The operative complaint in the Action alleges that Defendants Grubhub, Inc. (n/k/a Grubhub Holdings, Inc.) and Grubhub Seamless, Inc. (n/k/a Grubhub, Inc.) (collectively, “Grubhub”) sent or had sent on their behalves facsimile advertisements with deficient opt-out notices *en masse* to unwilling recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

5. As a result of Grubhub’s conduct, Siprut PC filed the Complaint on February 11, 2014, asserting a cause of action for violation of the TCPA.

6. After the Complaint was served, Grubhub contacted Plaintiff requesting an extension of time to answer or otherwise plead in order for Grubhub to have sufficient time to retain counsel. Plaintiff agreed.

7. Because Grubhub did not have counsel to file the motion at the time, Plaintiff filed a motion on February 28, 2014 seeking an extension for Grubhub.

8. On March 4, 2014, the Court granted Plaintiff’s motion.

9. In March, Grubhub contacted Plaintiff and represented that it had retained counsel but needed another extension to file its answer.

10. On March 28, 2014, Grubhub filed another motion seeking an extension. Plaintiff did not object, and the Court granted the motion.

11. On May 2, 2014, Grubhub filed its Answer and Affirmative Defenses.

12. Shortly thereafter, Plaintiff and Grubhub (collectively, the “Parties”) began settlement negotiations through numerous telephonic conferences and written correspondence.

13. Between May 2014 and July 2014, the Parties considered various settlement options that would afford class-wide relief.

14. Finally, in August 2014, the Parties ultimately reached an agreement on all material terms that would afford meaningful relief to the proposed Class.

15. Based on empirical data supplied by Grubhub during the settlement negotiations, it was established that approximately 40,536 individuals or entities were sent faxes. Thus, the potential benefit obtained for the proposed Class is \$2,026,800, less the costs of settlement administration, Class Counsel's fees, and Plaintiff's incentive award.

16. I have substantial experience in complex business litigation and class actions. My Firm, Siprut PC, substantially concentrates its practice in the prosecution of class actions. My Firm's resume is attached hereto as Exhibit A.

17. Throughout this litigation, my Firm has diligently prosecuted this matter, dedicating substantial resources to the investigation and litigation of the claims at issue, and has successfully negotiated the settlement of this matter to the benefit of the proposed Class. Neither my firm nor the named Plaintiff has any interests antagonistic to the interests of the other Class members.

18. Plaintiff and Class Counsel believe that the claims asserted against Grubhub in this litigation have merit. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation against Grubhub through trial and appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. This litigation involves complex class issues, which would involve protracted and risky litigation if not settled. Moreover, in the event of any judgment against Grubhub, an appeal could postpone any recovery for several years.

19. Accordingly, Plaintiff and Class Counsel believe that there is substantial benefit to the Class of receiving a cash award and an injunction from Grubhub.

20. The Settlement Agreement, and the terms thereof, was reached after rigorous advocacy and extensive negotiations, in which I participated directly. Plaintiff and Class Counsel believe that the terms set forth in the Settlement Agreement confer substantial benefits upon the proposed Class, and is a fair, reasonable, and adequate resolution of the Class' claims against Grubhub. As such, the Settlement is entitled to a good-faith determination and I respectfully submit that this Court should enter the proposed Preliminary Approval Order and, ultimately, the Final Order and Judgment, approving this proposed Settlement in all respects.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed on August 19, 2014 at Chicago, Illinois.

s/ Joseph J. Siprut

EXHIBIT A

SIPRUT PC FIRM RESUME

Siprut PC is a commercial litigation firm based in Chicago, with additional offices in San Diego and Boston. The firm focuses its practice exclusively on litigation and pre-litigation counseling, encompassing a wide variety of areas and issues. The firm's primary practice groups broadly include plaintiffs' class action litigation (with a particular emphasis on consumer law issues) and complex business litigation, including particularly *qui tam* and whistleblower litigation; professional malpractice litigation; intellectual property and patent litigation; and employment practices.

Siprut PC and its attorneys have successfully procured judgments or settlements in scores of cases in state and federal courts across the country, many of which have received extensive media coverage.

CLASS ACTION AND CONSUMER LITIGATION

Siprut PC prosecutes class actions across a wide variety of industries. The firm and its attorneys have been appointed lead or co-lead counsel in nationwide class actions across the country and have recovered hundreds of millions of dollars on behalf of consumers:

- *In re Southwest Airlines Voucher Litigation* (Case No. 11-cv-8176, N.D. Ill.): Appointed lead counsel in nationwide class action relating to Southwest's unilateral cancellation of drink vouchers paid for by business select travelers. Settlement valued up to \$58 Million granted final approval.
- *Arrington, et al. v. National Collegiate Athletic Association* (Case No. 11-cv-06356, N.D. Ill.): Appointed co-lead interim class counsel in a nationwide class action against the NCAA on behalf of current and former collegiate athletes.
- *In re Energizer Sunscreen Litigation*, (Case No. 13-cv-00131, N.D. Ill.): Appointed lead counsel in nationwide class action relating to defective sunscreen nozzles manufactured by Energizer. Settlement valued up to \$200 Million granted preliminary approval.
- *Foos v. Ann, Inc.* (Case No. 11-cv-02794-L-MDD, S.D. Cal.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at \$2,323,500 received final approval.
- *Lamb v. Bitech, Inc.* (Case No. 3:11-cv-05583-EDL, N.D. CA): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Class-wide settlement on behalf of 30,000 California residents preliminarily approved.

- *Golba v. Dick's Sporting Goods, Inc.* (Case No. 30-2011-00472227, CA Superior Ct.): Appointed lead counsel in class action on behalf of California consumers for violations of the Song-Beverly Act. Settlement valued at \$1,150,000 granted final approval.
- *Banakus v. United Continental Holdings, et al.* (Case No. 12-cv-06244, N.D. Ill.): Appointed co-lead interim class counsel in a nationwide class action pertaining to United's unilateral, retroactive devaluation of the benefits earned by premier members.
- *In re Barnes & Noble Pin Pad Litigation* (Case No. 12-cv-8617, N.D. Ill.): Appointed co-lead counsel in nationwide class action relating to a security breach exposing the personal information of hundreds of thousands of consumers nationwide.
- *Goodman v. Casting360, LLC* (Case No. 12-cv-09851, N.D. Ill.): Appointed lead counsel in nationwide class action for violations of the federal Telephone Consumer Protection Act.
- *Kruse, et al. v. Citigroup, Inc.* (Case No. 11-cv-01003-AG-AN, C.D. CA): Appointed lead counsel in a nationwide class action against Citigroup for a massive data breach exposing the personal information of hundreds of thousands of consumers nationwide.

Additional representative class actions that the firm is currently prosecuting as lead counsel include:

- *Bellville v. Ford Motor Co.* (Case No. 3:13-cv-06529, S.D. W. Va.): Nationwide class action relating to "sudden acceleration" in certain Ford vehicles.
- *Astor Professional Search, LLC v. MegaPath, Inc.* (Case No. 12-cv-02313, N.D. Ill.): Nationwide class action related to MegaPath's failure to alert customers of e-mail deliverability problems.
- *Yuncker v. Pandora Media, Inc.* (Case No. 11-cv-3113-DMR, N.D. CA): Nationwide class action relating to Pandora's collection and dissemination of consumers' personally identifiable information without consent.
- *Hodges v. Apple Inc.* (Case No. 3:13-cv-01128-EMC, N.D. CA): Nationwide class action relating to product defects in MacBook Pro computers.

BUSINESS AND COMMERCIAL LITIGATION

Siprut PC handles complex commercial and business litigation matters in Illinois and throughout the United States, including claims involving:

- Patent litigation
- Professional liability
- Breach of contract
- Partnership disputes
- Real estate and lease disputes
- Copyright litigation
- Business fraud
- Unfair trade practices
- Theft of trade secrets

ATTORNEYS

JOSEPH SIPRUT is the founder and managing partner of Siprut PC. His practice encompasses a wide spectrum of litigation, with an emphasis on challenging cases against powerful, well-funded adversaries. He has been appointed lead or co-lead class counsel in some of the largest and most complex class actions in the country, and has substantial first-chair experience in all aspects of litigation, including trial, arbitration, and mediation. He was named a “Super Lawyer” in Illinois for Class Action Litigation, and holds an *AV Preeminent* rating by Martindale Hubble, the highest possible peer review rating. Mr. Siprut was also selected for membership in the *Multi-Million Dollar Advocates* forum, one of the most prestigious groups of trial lawyers in the United States. Membership is limited to attorneys who have won million and multi-million dollar verdicts and settlements, and fewer than 1% of U.S. lawyers are members.

Mr. Siprut has appeared in dozens of publications and television and radio broadcasts worldwide, including CBS Radio, NPR, ESPN, Bloomberg Law, Law360, the Chicago Tribune, and more. He has been deemed by the media as the “Friend of the Frequent Fliers” for his successful litigation crusades against the airline industry on behalf of airline customers, as well as a “Leading Sports Reformer” for his advocacy to combat the problem of concussions and head injuries in college sports.

Mr. Siprut is an Adjunct Professor at Northwestern University School of Law, where he teaches in the Trial Advocacy program. He is a frequent author and speaker, having published over 25 articles in the nation's leading law reviews and legal journals on topics including the right of privacy, copyright litigation, and contract doctrine, as well as litigation strategy and tactics. He was appointed as a member of the Illinois ARDC Hearing Board, and is also a member of the Advisory Board for the Fair Contracts Project, an initiative focused on counteracting the implications of fine print in standard form consumer contracts.

Mr. Siprut is a graduate of Northwestern University School of Law, where he served as the Managing Editor of the Northwestern Law Review and was selected to represent Northwestern in national competition as a member of its National Moot Court team. He was also awarded the Institute for Humane Studies Fellowship, a national fellowship competition for law and graduate study.

Prior to founding Siprut PC, Mr. Siprut spent his career practicing at some of the top corporate litigation firms in the country. Mr. Siprut has been recognized by the Law in Public Service Committee of the ABA for his dedication to pro bono work. He is admitted to practice in Illinois, the United States District Court for the Northern District of Illinois (including its Trial Bar), the Seventh Circuit Court of Appeals, and the United States Supreme Court. For over five years, Mr. Siprut served as an arbitrator in the Cook County Arbitration Program.

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MELANIE NELSON is a partner at Siprut PC. Her practice includes a wide array of commercial disputes, with an emphasis on personal injury and consumer class actions. Ms. Nelson is a seasoned trial attorney, having handled nearly 30 jury trials -- 10 as first-chair. Throughout her career, she has represented diverse clients, from Fortune 500 companies to individuals.

Before joining Siprut PC, Ms. Nelson served as Assistant Corporation Counsel for the City of Chicago Law Department, where she represented the City of Chicago in a broad range of cases including wrongful death, civil rights, medical malpractice and personal injury claims. Prior to government service, Ms. Nelson practiced at prominent national litigation firms, focusing primarily on antitrust litigation and commercial business disputes.

Ms. Nelson has successfully argued a habeas corpus petition before the Seventh Circuit Court of Appeals and has significant experience representing domestic violence victims in obtaining orders of protection and asylum.

Ms. Nelson graduated from the University of Chicago Law School, with honors, and served on the Executive Board of the University of Chicago Legal Forum. She earned her undergraduate degree at the University of Michigan, with honors and distinction. Ms. Nelson is admitted to practice in Illinois, the Northern District of Illinois and the Seventh Circuit Court of Appeals.

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GREGG BARBAKOFF is an attorney at Siprut PC. His practice encompasses a wide spectrum of litigation with an emphasis on commercial litigation and consumer class actions. Gregg serves on the Board of Directors for the American Constitution Society, a progressive legal organization dedicated to the core Constitutional values of civil liberties, open access to justice, and the rule of law.

Gregg is a graduate of the Chicago-Kent College of Law, where he served as an editor of the Seventh Circuit Review, in which he was also published. During law school, he was selected as a Member of the Chicago-Kent Moot Court Honor Society, where he won the award for Best Overall Oralist at the Appellate Lawyers Association Moot Court Competition. Gregg was selected for the Class of 1976 Honors Scholarship while attending Chicago-Kent. Gregg graduated from Chicago-Kent *magna cum laude*, and was recently inducted into the Order of the Coif. Gregg is admitted to practice in Illinois and in the United States District Court for the Northern District of Illinois.

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MATTHEW SAVIN is an attorney at Siprut PC. His practice includes a broad range of civil litigation, with an emphasis on commercial litigation and consumer class actions. Matthew graduated with honors from Chicago-Kent College of Law, where he served as staff editor for the Seventh Circuit Review and received the Baum Fellowship for his work in public interest law. Matthew is admitted to practice in the State of Illinois and the United States District Court for the Northern District of Illinois.

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GREG JONES is an attorney at Siprut PC. His practice focuses on business litigation, with an emphasis on business torts and consumer fraud issues. Greg is a graduate of Northwestern University and Loyola University Chicago School of Law. At Loyola, Greg served as a Copy Editor and Symposium Editor for the Consumer Law Review. In addition, Greg was a fellow with the Institute for Consumer Antitrust Studies and served a legal internship with Magistrate Judge Michael Mason in the Northern District of Illinois.

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ISMAEL SALAM is an attorney at Siprut PC. His practice is focused principally on class action litigation, with an emphasis on consumer protection, data privacy and technology issues, and litigation under the Telephone Consumer Protection Act. Ismael is a graduate of Loyola University Chicago School of Law, where he served as Managing Editor of the Public Interest Law Reporter, in which he is also published. He also served as a junior member of the Loyola Law Journal, the law school's main publication. During law school, he was selected as a Student Fellow for Loyola's Institute for Consumer Antitrust Studies, where he drafted papers on price-fixing. He was also awarded the CALI for the highest grade in his Law and Economics course.

Prior to Siprut PC, Ismael interned with the U.S. Army Judicial Advocate General's Corps at Fort Carson, Colorado, U.S. Attorney's Office for the Northern District of Illinois, U.S. Court of Appeals for the Seventh Circuit, and U.S. District Court for the Northern District of Illinois.

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BRANDON CAVANAUGH is an attorney (*Illinois Bar Application Pending*) at Siprut PC. His practice includes a wide variety of complex civil litigation, with an emphasis on consumer class action prosecution. He graduated from Loyola-Chicago's School of Law where he was a fellow with the Institute for Consumer Antitrust Studies and an editor for Loyola's Consumer Law Review. During law school, Brandon also served as an extern to the Honorable Joan Humphrey Lefkowitz of the Northern District Court of Illinois, and earned a CALI Award in Advanced Business Organizations.

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TODD C. ATKINS is Of Counsel at Siprut PC, and heads the Firm's California office. His litigation practice encompasses class actions, real estate and securities matters – representing both brokers and plaintiffs. Todd is also a trained and experienced mediator, and received his certification from the National Conflict Resolution Center.

Todd is a graduate of the University of San Diego, School of Law. He is admitted to practice in California, the District of Columbia, and the United States District Court for the Southern District of California, and is also a licensed real estate broker

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ALEXANDER SHAPOVAL is Of Counsel at Siprut PC, and heads the Firm's Boston office. His practice encompasses all manner of civil litigation, including class actions and personal injury litigation. Alexander is an experienced trial lawyer, with substantial first-chair jury trial experience.

Alexander is a graduate of the Massachusetts School of Law. He is admitted to practice in Massachusetts and the United States District Court for the District of Massachusetts.